



TRANSMITTAL FORM

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ENCLOSURES (check all that apply)

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| Application No. | 10/019,052 |
| Filing Date | April 22, 2002 |
| First Named Inventor | Roger NEW et al. |
| Group Art Unit | 1639 |
| Examiner Name | Mark Lance Shibuya |
| Attorney Docket No. | 1417-212 |
| Customer No. | 06449 |
| Confirmation No. | 5183 |

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| <input type="checkbox"/> Fee Transmittal Form | <input type="checkbox"/> Assignment Papers | <input type="checkbox"/> After Allowance Communication to Group |
| <input type="checkbox"/> Fee Attached | <input type="checkbox"/> Drawing(s) | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences |
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| <input type="checkbox"/> Response to Missing Parts/ Incomplete Application | | |
| <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | | |

REMARKS:

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|----------------------|---------------------------------------|--------------------------|-------------------|----------------------|---------|
| SUBMITTED BY | | Complete (if applicable) | | | |
| NAME AND REG. NUMBER | G. Franklin Rothwell, Reg. No. 18,125 | | | | |
| SIGNATURE | Adam Trieber, Reg. No. 48,000 | DATE | September 1, 2005 | DEPOSIT ACCT USER ID | 02-2135 |



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/019,052
Applicant : Roger NEW *et al.*
Filed : April 22, 2002
TC/A.U. : 1639
Examiner : Mark Lance Shibuya

Docket No. : 1417-212
Customer No. : 06449
Confirmation No. : 5183

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

In response to the Restriction Requirement mailed August 1, 2005, in the above-identified application, Applicants hereby elect Group I consisting of claims 1-12 with traversal.

The Office Action contends that Toth et al, US 5,882,645, teach compositions comprising a group of peptides, hydrophobic tail group that can form a lipid bi-layer and a spacer that connects the head and tail group, which absent evidence to the contrary, could position together to form an epitope, as in the invention of claim 1. Office Action, page 3. The Office Action does not show or explain why the head groups taught in Toth are expected to form an epitope. The Office Action simply asserts that they could, and requires applicants to disprove the assertion. However, the MPEP at 1800-95 - 1800-96 says:

Although lack of unity of invention should certainly be raised in clear cases, it should neither be raised nor maintained on the basis of a narrow, literal or academic approach. There should be a broad, practical consideration of the degree of interdependence of the alternatives

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Restriction Requirement dated September 1, 2005

presented, in relation to the state of the art as revealed by the international search or, in accordance with PCT Article 33(6), by any additional document considered to be relevant. If the common matter of the independent claims is well known and the remaining subject matter of each claim differs from that of the others without there being any unifying novel inventive concept common to all, then clearly there is lack of unity of invention. If, on the other hand, there is a single general inventive concept that appears novel and involves inventive step, then there is unity of invention and an objection of lack of unity does not arise. For determining the action to be taken by the examiner between these two extremes, rigid rules cannot be given and each case should be considered on its merits, the benefit of any doubt being given to the applicant. (Underline added).

Simply asserting a mere possibility with a modifying sentence "absent evidence to the contrary" does not give the benefit of doubt to the applicant. Such an approach, contrary to what the MPEP mandates, takes the benefit of doubt away from the applicant and let the Patent Office enjoy it.

Applicants cannot find any explicit or even implicit teaching that the peptide head groups in Toth are positioned to form an epitope at column 1, lines 1-14, column 2, lines 12-30 and column 9, lines 22-34, where the Office Action specifically pointed out. On the other hand, applicants submit that column 5, lines 3-12, 28-38 and 51-56, Figures 1-3, column 3, line 62 - column 4, line 1 and column 9, lines 13-21 rather implies that each peptide head group in Toth works on its own and the head groups do not interact to form an epitope.

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With benefit of doubt given to applicants and the implication that head groups in
Toth do not interact to form an epitope, applicants submit that the outstanding
restriction requirement is overcome and respectfully request that it be withdrawn.

In light of the foregoing, favorable examination on the merits is requested.
Please charge any fee or credit any overpayment pursuant to 37 C.F.R. § 1.16 or 1.17
to Deposit Account No. 02-2135.

Respectfully submitted,

Adam Trieber, Reg. No. 48,080

 (48,080) 

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